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Of Attorneys for Charlene Sue Cox, Trustee of Charlene Sue Cox Revocable Trust Dated 10-9-08 and Timothy A. Hutchinson

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re:) **Case No. 12-63884-tmr7**

Berjac of Oregon)

Debtor(s)) **OBJECTION TO MOTION TO**
) **SETTLE AND COMPROMISE**
)

Creditors Charlene Sue Cox, Trustee of Charlene Sue Cox Revocable Trust Dated 10-9-08 and Timothy A. Hutchinson object to the Trustee's Motion to Settle and Compromise the Trustee's claims against the Jones & Roth CPA firm. Charlene Cox and Hutchinson, along with eight other plaintiffs, filed the Oregon Securities Law Class action in Multnomah County Circuit Court against the banks and other persons who aided the Berjac securities scheme. This Class action yielded settlements that have been an enormous source of economic relief for the investors who are creditors in this bankruptcy.

Over the course of 2016-17, the Class action plaintiffs and the Trustee reached settlements with Jones & Roth whereby the Class action plaintiffs and the Trustee each

obtained stipulated judgments for \$3.5 million each from Jones & Roth. As a part of the settlements with Jones & Roth, the Class action plaintiffs and the Trustee agreed that they would divide any future joint settlements 50-50. The Class action plaintiffs and the Trustee each served writs of garnishment on Liberty Insurance Underwriters, Jones & Roth's liability insurance carrier. Liberty removed both proceedings to U.S. District Court. The two proceedings were consolidated and went to hearing before the Honorable Michael Mosman. Judge Mosman ruled against the Class action plaintiffs and the Trustee, and the court entered a joint judgment against the Class action plaintiffs and the Trustee in the amount of \$5,396 in costs. The Class action plaintiffs and the Trustee filed a joint notice of appeal to the Ninth Circuit, and in September, they filed a joint Opening Brief.

Consistent with the 50-50 provision in the settlement, it was understood between the Class action plaintiffs and the Trustee that they would share-and-share-alike the \$5,396 obligation on a 50-50 basis. In negotiating his settlement with Liberty, however, the Trustee has not made any provision to take care of his share of \$5,396 joint judgment. Instead, he has made an arrangement whereby Liberty will not go after the Trustee on the joint judgment. The effect of that is that the entire \$5,396 joint judgment will be imposed on the Class action plaintiffs. That is unfair, and it is contrary to the agreement between the Class action plaintiffs and the Trustee.

It is particularly unfair given the fact that the Class action plaintiffs, more than any other parties, are responsible for obtaining a lions-share of the relief that has been received

by the investors who are creditors in this bankruptcy. The Class action plaintiffs received no compensation for their efforts aside from their regular share of the settlement proceeds. It is unfair that they should now bear more than 50% of the \$5,396 joint judgment.

On top of that, failing to resolve this issue via this Objection would simply generate post-petition claims by the Class action plaintiffs under Section 503. It makes the most sense to resolve this matter now.

For the foregoing reasons, the Objection to the motion to settle and compromise should be sustained until such time as the Trustee resolves his share of the outstanding joint judgment.

DATED this 18th day of October, 2018.

ESLER, STEPHENS & BUCKLEY, LLP

s/ John W. Stephens
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CERTIFICATE OF SERVICE

I certify that on October 18, 2018 copies of **OBJECTIONS TO MOTION TO SETTLE AND COMPROMISE** were mailed and emailed to:

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DATED this 18th day of October

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Of Attorneys for Creditors Charlene Sue Cox,
Trustee of Charlene Sue Cox Trust Dated 10-6-
08 and Timothy A. Hutchinson